

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Parts 0, 1, 2, 61, 64, 73, 74, and 80)
of the Commission's Rules, Concerning)
Commission Organization, Practice and)
Procedure, Frequency Allocations and Radio)
Treaty Matters; General Rules and Regulations,)
Tariffs, Miscellaneous Rules Relating to Common)
Carriers, Radio Broadcast Services, and Stations)
in the Maritime Services)

ERRATUM

Released: September 19, 2008

By the Managing Director:

On January 25, 2008, the Managing Director released an *Order*, DA 08-122, in the above-captioned proceeding. This Erratum corrects an inadvertent error by reinserting two rules that were eliminated and correcting typographical errors in the Appendix. Accordingly, this Erratum corrects the Appendix of the Order as indicated below:

Re-insert the former § 1.1108 and § 1.1109 of the Commission's rules, and renumber them as the new § 1.1110 and § 1.1111. The new § 1.1111 has been restructured for reasons of clarity. The new § 1.1110 and § 1.1111 should read as follows:

§ 1.1110 Attachment of charges.

The charges required to accompany a request for the Commission regulatory services listed in §§ 1.1102 through 1.1109 of this subpart will not be refundable to the applicant irrespective of the Commission's disposition of that request. Return or refund of charges will be made only in certain limited instances as set out at § 1.1115 of this subpart.

§ 1.1111 Payment of charges.

(a) The schedule of fees for applications and other filings (Bureau/Office Fee Filing Guides) lists those applications and other filings that must be accompanied by a FCC Form 159, Remittance Advice or the electronic version of the form, FCC Form 159-E, one of the forms that is automatically generated when an applicant accesses the Commission's on-line filing and payment process.

(b) Applicants may access the Commission's on-line filing (<http://www.fcc.gov/e-file.html>) and fee payment program by accessing (<http://www.fcc.gov/feefiler.html>). Applicants who use

the on-line process will be directed to the appropriate electronic application and payment forms for completion and submission of the required application(s) and payment information.

(c) Applications and other filings that are not submitted in accordance with these instructions will be returned as unprocessable.

NOTE: This requirement for the simultaneous submission of fee forms with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. See §1.1121 of this subpart.

(d) Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted directly to the Bureau/Office requesting the additional information. The original fee will be forfeited if the additional information or corrections are not resubmitted to the appropriate Bureau/Office by the prescribed deadline. A forfeited application fee will not be refunded. If an additional fee is required, the original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee to the Commission's lockbox bank. Applicants should attach a copy of the Commission's request for additional or corrected information to their resubmission.

(1) If the Bureau/Office staff discovers within 30 days after the resubmission that the required fee was not submitted, the application will be dismissed.

(2) If after 30 days the Bureau/Office staff discovers the required fee has not been paid, the application will be retained and a 25 percent late fee will be assessed on the deficient amount even if the Commission has completed its action on the application. Any Commission actions taken prior to timely payment of these charges are contingent and subject to recession.

(e) Should the staff change the status of an application, resulting in an increase in the fee due, the applicant will be billed for the remainder under the conditions established by § 1.1118(b) of the rules.

NOTE: Due to the statutory requirements applicable to tariff filings, the procedures for handling tariff filings may vary from the procedures set out in the rules.

The current §§ 1.1110 through 1.1119 is being renumbered as §§ 1.1112 through 1.1121 and should read as follows:

§ 1.1112 Form of payment.

(a) Fee payments should be in the form of a check, bank draft, on money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa, MasterCard, American Express, or Discover credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. The Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient. Third party checks (*i.e.*, checks with a third party as maker or endorser) will not be accepted.

- (1) Specific procedures for electronic payments are announced in Bureau/Office fee filing guides.
- (2) It is the responsibility of the payer to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing.
- (3) Payments by wire transfer will be accepted; however, to insure proper credit, applicants must follow the instructions set out in the appropriate Bureau/Office fee filing guide.
- (b) Applicants are required to submit one payment instrument (check, bank draft or money order) and FCC Form 159 with each application or filing. Multiple payment instruments for a single application or filing are not permitted. Except that a separate Fee Form (FCC Form 159) will not be required once the information requirements of that form (the Fee Code, fee amount, and total fee remitted) are incorporated into the underlying application form.
- (c) The Commission may accept multiple money orders in payment of a fee for a single application where the fee exceeds the maximum amount for a money order established by the issuing agency and the use of multiple money orders is the only practical method available for fee payment.
- (d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below in paragraphs (d) (1) and (2) of this section.
 - (1) Payment by cashier's check may be required when a person or organization has made payment, on one or more occasions with a payment instrument on which the Commission does not receive final payment and such failure is not excused by bank error.
 - (2) The Commission will notify the party in writing that future payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by cashier's check, the Party's payment will not be accepted and its application or other filing will be returned.
- (e) All fees collected will be paid into the general fund of the United States Treasury in accordance with Pub. L. 99-272.
- (f) The Commission will furnish a stamped receipt of an application only upon request that complies with the following instructions. In order to obtain a stamped receipt for an application (or other filing), the application package must include a copy of the first page of the application, clearly marked "copy", submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the package. The copy will be date-stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. No remittance receipt copies will be furnished.

§ 1.1113 Filing locations.

- (a) Except as noted in this section, applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in §§ 1.1102 through 1.1109.
- (1) Tariff filings shall be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. On the same day, the filer should submit a copy of the cover letter, the FCC Form 159, and the appropriate fee to the Commission's lockbox bank at the address established in § 1.1105.
- (2) Bills for collection will be paid at the Commission's lockbox bank at the address of the appropriate service as established in §§ 1.1102 through 1.1109, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill sent by the Commission. Payments must be accompanied by the bill to ensure proper credit.
- (3) Petitions for reconsideration or applications for review of fee decisions pursuant to § 1.1119(b) of this subpart must be accompanied by the required fee for the application or other filing being considered or reviewed.
- (4) Applicants claiming an exemption from a fee requirement for an application or other filing under 47 U.S.C. 158(d)(1) or § 1.1116 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed at the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1109.
- (b) Except as provided for in paragraph (c) of this section, all materials must be submitted as one package. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations. Materials submitted at other than the location and address required by § 0.401(b) and paragraph (a) of this section will be returned to the applicant or filer.
- (c) Fees for applications and other filings pertaining to the Wireless Radio Services that are submitted electronically via ULS may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the application file number (assigned by the ULS electronic filing system on FCC Form 159) and submit such number with the payment in order for the Commission to verify that the payment was made. Manual payments must be received no later than ten (10) days after receipt of the application on ULS or the application will be dismissed. Payment received more than ten (10) days after electronic filing of an application on a Bureau/Office electronic filing system (*e.g.*, ULS) will be forfeited (*see* §§ 1.934 and 1.1111.)
- (d) Fees for applications and other filings pertaining to the Multichannel Video and Cable Television Service (MVCTS) and the Cable Television Relay Service (CARS) that are submitted electronically via the Cable Operations and Licensing System (COALS) may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the FCC Form 159 generated by COALS (pre-filled with the transaction confirmation number) and completed with the necessary additional payment information to allow the Commission to verify that payment was made. Manual payments must be received no later than ten (10) days after receipt of the application or filing in COALS or the application or filing will be dismissed.

§ 1.1114 Conditionality of Commission or staff authorizations.

(a) Any instrument of authorization granted by the Commission, or by its staff under delegated authority, will be conditioned upon final payment of the applicable fee or delinquent fees and timely payment of bills issued by the Commission. As applied to checks, bank drafts and money orders, final payment shall mean receipt by the Treasury of funds cleared by the financial institution on which the check, bank draft or money order is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the application or filing will be:

- (i) Dismissed and returned to the applicant;
- (ii) Shall lose its place in the processing line;
- (iii) And will not be accorded *nunc pro tunc* treatment if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the Commission will:

- (i) Automatically rescind that instrument of authorization for failure to meet the condition imposed by this subsection; and
 - (ii) Notify the grantee of this action; and
 - (iii) Not permit *nunc pro tunc* treatment for the resubmission of the application or filing if the relevant deadline has expired.
- (3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a fee or issued a bill payable at a future date, further processing of the application or filing, or the grant of authority, shall be conditioned upon final payment of the fee, plus other required payments for late payments, by the date prescribed by the deferral decision or bill. Failure to comply with the terms of the deferral decision or bill shall result in the automatic dismissal of the submission or rescission of the Commission authorization for failure to meet the condition imposed by this subpart. The Commission reserves the right to return payments received after the date established on the bill and exercise the conditions attached to the application. The Commission shall:

- (1) Notify the grantee that the authorization has been rescinded;
- (i) Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization.
- (2) Not permit *nunc pro tunc* treatment to applicants who attempt to refile after the original deadline for the underlying submission.

(c)(1) Where an applicant is found to be delinquent in the payment of application fees, the Commission will make a written request for the delinquent fee, together with any penalties that may be due under this subpart. Such request shall inform the applicant/filer that failure to pay or make satisfactory payment arrangements will result in the Commission's withholding action on, and/or as appropriate, dismissal of, any applications or requests filed by the applicant. The staff shall also inform the applicant of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees, and payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is made. If payment or satisfactory arrangement is not made within 30 days of the date of the original notification, the application will be dismissed.

§ 1.1115 Return or refund of charges.

(a) All refunds will be issued to the payer named in the appropriate block of the FCC Form 159. The full amount of any fee submitted will be returned or refunded, as appropriate, under the authority granted at § 0.231.

(1) When no fee is required for the application or other filing. (*see* § 1.1111).

(2) When the fee processing staff or bureau/office determines that an insufficient fee has been submitted within 30 calendar days of receipt of the application or filing and the application or filing is dismissed.

(3) When the application is filed by an applicant who cannot fulfill a prescribed age requirement.

(4) When the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application.

(5) When a waiver is granted in accordance with this subpart.

NOTE: Payments in excess of an application fee will be refunded only if the overpayment is \$10 or more.

(6) When an application for new or modified facilities is not timely filed in accordance with the filing window as established by the Commission in a public notice specifying the earliest and latest dates for filing such applications.

(b) Comparative hearings are no longer required.

(c) Applicants in the Media Services for first-come, first-served construction permits will be entitled to a refund of the fee, if, within fifteen days of the issuance of a Public Notice, applicant indicates that there is a previously filed pending application for the same vacant channel, such applicant notifies the Commission that they no longer wish their application to remain on file behind the first applicant and any other applicants filed before his or her application, and the applicant specifically requests a refund of the fee paid and dismissal of his or her application.

(d) Applicants for space station licenses under the first-come, first served procedure set forth in part 25 of this title will be entitled to a refund of the fee if, before the Commission has placed the application on public notice, the applicant notifies the Commission that it no longer wishes to keep its application on file behind the licensee and any other applicants who filed their applications before its application, and specifically requests a refund of the fee and dismissal of its application.

§ 1.1116 General exemptions to charges.

No fee established in 1.1102 through 1.1109 of this subpart, unless otherwise qualified herein, shall be required for:

(a) Applications filed for the sole purpose of modifying an existing authorization (or a pending application for authorization) in order to comply with new or additional requirements of the Commission's rules or the rules of another Federal agency. However, if the applicant also requests an additional modification, renewal, or other action, the appropriate fee for such additional request must accompany the application. Cases in which a fee will be paid include applications by FM and TV licensees or permittees seeking to upgrade channel after a rulemaking.

(b) Applicants in the Special Emergency Radio and Public Safety Radio Services that are government entities or nonprofit entities. Applicants claiming nonprofit status must include a current Internal Revenue Service Determination Letter documenting this nonprofit status.

(c) Applicants, permittees or licensees of noncommercial educational (NCE) broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.503 of this chapter.

(d) Applicants, permittees, or licensees qualifying under paragraph (c) of this section requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service) private radio service, or common carrier radio communications service otherwise requiring a fee, if the radio service is used in conjunction with the NCE broadcast station on an NCE basis.

(e) Other applicants, permittees, or licensees providing, or proposing to provide, an NCE or instructional service, but not qualifying under paragraph (c) of this section, may be exempt from filing fees, or be entitled to a refund, in the following circumstances.

(1) An applicant is exempt from filing fees if it is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on an NCE basis;

(2) An applicant for a translator or low power television station that proposes an NCE service will be entitled to a refund of fees paid for the filing of the application when, after grant, it provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission.

(3) An applicant that has qualified for a fee refund under paragraph (e)(2) of this section and continues to operate as an NCE station is exempt from fees for broadcast auxiliary stations (subparts D, E, and F of part 74) or stations in the private radio or common carrier services where such authorization is to be used in conjunction with the NCE translator or low power station.

(4) An applicant that is the licensee in the Educational Broadband Service (EBS) (formerly, Instructional Television Fixed Service (ITFS)) (parts 27 and 74, e.g., §§ 27.1200, et seq., and 74.832(b), of this chapter) is exempt from filing fees where the authorization requested will be used by the applicant in conjunction with the provision of the EBS.

(f) Applicants, permittees or licensees who qualify as governmental entities. For purposes of this exemption a governmental entity is defined as any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(g) Applications for Restricted Radiotelephone Operator Permits where the applicant intends to use the permit solely in conjunction with duties performed at radio facilities qualifying for fee exemption under paragraphs (c), (d), or (e) of this section.

NOTE: Applicants claiming exemptions under the terms of this subpart must certify as to their eligibility for the exemption through a cover letter accompanying the application or filing. This certification is not required if the applicable FCC Form requests the information justifying the exemption.

§ 1.1117 Adjustments to charges.

(a) The Schedule of Charges established by §§ 1.1102 through 1.1109 of this subpart shall be reviewed by the Commission on October 1, 1999 and every two years thereafter, and adjustments made, if any, will be reflected in the next publication of Schedule of Charges.

(1) The fees will be adjusted by the Commission to reflect the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) from the date of enactment of the authorizing legislation (December 19, 1989) to the date of adjustment, and every two years thereafter, to reflect the percentage change in the CPI-U in the period between the enactment date and the adjustment date.

(2) Adjustments based upon the percentage change in the CPI-U will be applied against the base fees as enacted or amended by Congress in the year the fee was enacted or amended.

(b) Increases or decreases in charges will apply to all categories of fees covered by this subpart. Individual fees will not be adjusted until the increase or decrease, as determined by the net change in the CPI-U since the date of enactment of the authorizing legislation, amounts to at least \$5 in the case of fees under \$100, or 5% or more in the case of fees of \$100 or greater. All fees will be adjusted upward to the next \$5 increment.

(c) Adjustments to fees made pursuant to these procedures will not be subject to notice and comment rulemakings, nor will these decisions be subject to petitions for reconsideration under § 1.429 of the rules. Requests for modifications will be limited to correction of arithmetical errors made during an adjustment cycle.

§ 1.1118 Penalty for late or insufficient payments.

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under § 1.1111 (d) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

(1) A defective fee may be corrected by resubmitting the application or other filing, together with the entire correct fee.

(2) For purposes of determining whether the filing is timely, the date of resubmission with the correct fee will be considered the date of filing. However, in cases where the fee payment fails due to error of the applicant's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(b) Applications or filings accompanied by insufficient fees or no fees, or where such applications or filings are made by persons or organizations that are delinquent in fees owed to the Commission, that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill. Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission.

(c) Applicants to whom a deferral of payment is granted under the terms of this subsection will be billed for the amount due plus a charge equaling 25 percent of the amount due. Any Commission actions taken prior to timely payment of these charges are contingent and subject to rescission.

(d) Failure to submit fees, following notice to the applicant of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996), codified at 31 U.S.C. §§ 3711 *et seq.* See 47 C.F.R. 1.1901 through 1.1952. The debt collection processes described above may proceed concurrently with any other sanction in this paragraph.

§ 1.1119 Petitions and applications for review.

(a) The fees established by this subpart may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.

(b) Requests for waivers or deferrals will only be considered when received from applicants acting in respect to their own applications. Requests for waivers or deferrals of entire classes of services will not be considered.

(c) Petitions for waivers, deferrals, fee determinations, reconsiderations and applications for review will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

- (1) Petitions and applications for review submitted with a fee must be submitted to the Commission's lock box bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1109.
- (2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.
- (d) Deferrals of fees will be granted for an established period of time not to exceed six months.
- (e) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 159, or a request for deferral. A petition for waiver and/or deferral of payment must be submitted to the Office of the Managing Director as specified in paragraph (c) of this section. Waiver requests that do not include these materials will be dismissed in accordance with § 1.1111 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests.
- (f) Petitions for waiver of a fee based on financial hardship will be subject to the provisions of paragraph 1.1166(e).

§ 1.1120 Error claims.

- (a) Applicants who wish to challenge a staff determination of an insufficient fee or delinquent debt may do so in writing. A challenge to a determination that a party is delinquent in paying the full application fee must be accompanied by suitable proof that the fee had been paid or waived (or deferred from payment during the period in question), or by the required application payment and any assessment penalty payment (*see* § 1.1118) of this subpart). Failure to comply with these procedures will result in dismissal of the challenge. These claims should be addressed to the Federal Communications Commission, Attention: Financial Operations, 445 12th St. SW., Washington, DC 20554 or emailed to ARINQUIRIES@fcc.gov.
- (b) Actions taken by Financial Operations staff are subject to the reconsideration and review provisions of §§ 1.106 and 1.115 of this part, EXCEPT THAT reconsideration and/or review will only be available where the applicant has made the full and proper payment of the underlying fee as required by this subpart.
- (1) Petitions for reconsideration and/or applications for review submitted by applicants that have not made the full and proper fee payment will be dismissed; and
- (2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

§ 1.1121 Billing procedures.

- (a) The fees required for the International Telecommunications Settlements (§ 1.1103 of this subpart), Accounting and Audits Field Audits and Review of Attest Audits (§ 1.1106 of this subpart) should not be paid with the filing or submission of the request. The fees required for requests for Special Temporary Authority (*see generally* §§ 1.1102, 1.1104, 1.1106 & 1.1107 of this subpart) that the applicant believes is of an urgent or emergency nature and are filed directly

with the appropriate Bureau or Office should not be paid with the filing of the request with that Bureau or Office.

(b) In these cases, the appropriate fee will be determined by the Commission and the filer will be billed for that fee. The bill will set forth the amount to be paid, the date on which payment is due, and the address to which the payment should be submitted. *See also* § 1.1113 of this subpart.

All references to the renumbered provisions that appear elsewhere in the Commission's rules are amended to reflect these changes.

FEDERAL COMMUNICATIONS COMMISSION

Anthony J. Dale
Managing Director